

CIVIL PENALTY INFLATION ADJUSTMENTS

The Department of State is implementing “catch-up” adjustments to the maximum amounts of the civil monetary penalties (CMPs) it assesses. The Department is making these adjustments because under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114-74), Congress has mandated agencies to make a one time “catch-up” adjustment to their CMPs in order to account for inflation, which erodes the real value of statutorily mandated penalty amounts. The adjustment will be announced as a final rule on June 7, 2016. The 2015 Act also instructs agencies to make subsequent annual inflationary adjustments no later than January 15 of each year.

Per the legislation, these updated CMP amounts will apply to all penalties assessed after August 1, 2016, regardless of when the actual violation(s) occurred. The methodology for catch-up adjustments was mandated by the legislation and distributed to agencies by the Office of Management and Budget (OMB) in OMB Memorandum M-16-06, dated February 24, 2016.

The CMP amounts assessed by the Directorate of Defense Trade Controls (DDTC) are included in the final rule. These CMP amounts authorized by the Arms Export Control Act (“AECA,” 22 U.S.C. 2751 *et seq.*) will be adjusted as follows:

- For each violation of 22 U.S.C. 2778, an amount not to exceed \$1,094,010 (previously \$500,000);**
- For each violation of 22 U.S.C. 2779a, an amount not to exceed \$795,445 (previously \$500,000); and**
- For each violation of 22 U.S.C. 2780, an amount not to exceed \$946,805 (previously \$500,000).**

While DDTC is making this required adjustment to the maximum amounts of CMPs it may assess, it is important to note that the 2015 Act does not impede the discretion of agencies to assess CMPs lower than the maximum amount should circumstances warrant.